(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 20 2013 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:
[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a dentist and assistant professor at New York. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of Job Offer –
>
> (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on June 14, 2011. In an accompanying statement, counsel asserted:

> The expansive scope of [the petitioner's] salient contributions encompasses not only her immediate fields of Dentistry and Pediatric Dentistry, but also the medical community at large, both nationally and internationally. Her research and work with federal health shortage areas has already had a direct impact on the field and has gained her nationwide recognition. . . .

> In the labor certification process, the Department of Labor stipulates that the employer describe its job opportunity without "unduly restrictive" requirements [22 C.F.R. sec. 656.21(b)(2)]. The employer's requirements must conform to the standard job classifications set forth in the Dictionary of Occupational Titles and the requirements must be those formally required for the job in the United States. These conditions fall short in consideration of the nature of [the petitioner's] work in Dentistry with specialization in Pediatric Dentistry, because the factors relating to this scientific technique transcend the "context" of any specific employer's "business" operation. . . . **As a dentist, [the petitioner] is directly responsible for bettering the lives of her patients. Such skills cannot be measured in the context of business necessity**.

(Counsel's emphasis.) Chapter 22 of the Code of Federal Regulations deals with "Foreign Relations"; there is no 22 C.F.R. § 656. Counsel appears to refer to the regulation at 20 C.F.R. § 656.21(b)(2), which deals with labor certification. Though subsequently revised, that regulation used to read: "The employer shall document that the job opportunity has been and is being described without unduly restrictive job requirements." The reference to "business necessity" appears to relate to the former regulation at 20 C.F.R. § 656.21(b)(2)(ii), which read:

> If the job opportunity involves a combination of duties, for example engineer-pilot, the employer must document that it has normally employed persons for that combination of duties and/or workers customarily perform the combination of duties in the area of intended employment, and or the combination job opportunity is based on a business necessity.

The regulation mentioned "business necessity" specifically in relation to a combination of duties, which the petitioner has not claimed in this proceeding. Counsel did not explain how dental skills "cannot be measured in terms of business necessity," when an employer that provides or teaches dental care can presumably require its job applicants to have certain necessary skills in those areas.

Counsel cited a decision by the Board of Alien Labor Certification Appeals (BALCA) to support the claim that a labor certification application for the petitioner would likely be denied as "unduly restrictive." The inability to obtain a labor certification would not, by itself, be a deciding factor in the petitioner's favor. The wording of the statute makes it clear that exemption from the job offer requirement rests on the national interest, not on an alien's inability to obtain a labor certification. Even so, the cited materials do not strongly support counsel's assertions. In the cited administrative decision, BALCA ruled:

> This Panel finds the unqualified term "artistic ability" to be vague and subjective without any guidelines or criteria available to determine whether an applicant is qualified for the position. Accordingly, the special requirement of artistic ability is unduly restrictive under §656.21(b)(2), because the Employer has rejected otherwise qualified U.S. workers based on this vague, subjective requirement.

Michael Graves Architect, 89-INA-131, 1990 WL 300112 (Bd. Alien Lab. Cert. App. Feb. 21, 1990). BALCA found that "artistic ability" is subjective and difficult to "quantify . . . in terms of length of training or experience." *Id.* Counsel sought to compare the vaguely-defined "artistic ability" in *Michael Graves* to the present petitioner's "ability to master state-of-the-art technologies and complex research techniques," and contended that the petitioner's "scientific ingenuity cannot be quantified because her exceptional skills are contingent upon her specialized knowledge of treatments and therapies." Counsel did not explain how "specialized knowledge of treatments and therapies" correlates to "scientific ingenuity." If the petitioner did not, herself, innovate the "treatments and therapies," but instead learned them in the course of her own education, then her knowledge of those methods is not a matter of "ingenuity" (defined as "inventive imagination or skill"). *Webster's II New College Dictionary* 569 (2001). Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *NYSDOT*, 22 I&N Dec. 221.

Counsel stated: "The sustained national acclaim [the petitioner] has received for her contributions in the field is evidenced by the numerous independent letters of support she has received from top experts nation" [sic]. It is not clear whether counsel meant to say that the letters are from the "top experts in the nation," or from "top experts across the nation." In point of fact, all of the witnesses are in the New York area or have demonstrable ties to the petitioner, and the petitioner has not established their status as "top experts," however defined.

Like the petitioner, graduated from the School of Dentistry in 2005. Regarding her former classmate, stated:

> [The petitioner's] vast knowledge of dental medicine has been recognized by her colleagues who consider her to be one of a very few at the top of her field.
>
> Throughout her career, [the petitioner] has been singled out for her abilities and accomplishments in all of her roles as an outstanding dentist.

did not provide any specific information to support the very general claims stated above. Instead, she listed the petitioner's duties (which appear to constitute the typical duties of a dentist) and provided details about her treatment of one particular patient. also stated that the petitioner "is a member of the American Dental Association. . . . Membership in each of these organizations requires extraordinary credentials in the dental field and serves as a testament to [the petitioner's] status as an elite dentist." Despite using the phrase "each of these organizations," named only one organization. The record contains no evidence to support the claim that membership in the American Dental Association "requires extraordinary credentials in the dental field." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

co-president of was studying for a master's degree in public health at when she wrote her letter in July 2010. stated that the petitioner "has gained widespread recognition in the dental community." praised, but did not identify or describe, the petitioner's "outstanding contributions to the field of dentistry at large."

of Massachusetts, has "come to know [the petitioner] through [their] association at the praised the petitioner as "an asset to her community" but did not repeat the claims of other witnesses that the petitioner has earned "widespread recognition."

assistant director of the New York, claimed no credentials in dentistry. Rather, she is a registered nurse. Therefore, the record offers no reason to call her a "top expert" in the petitioner's field. stated that the petitioner "has gained a reputation as the dentist to call in the most complex dentistry cases." As with other witness letters, the record contains no specific, verifiable evidence to support this vague assertion.

The record contains ample documentation arising from the petitioner's graduate studies, dental practice, and teaching duties, but no objective evidence to show that the petitioner's efforts have had particularly significant impact or influence on the field of dentistry at large.

On November 21, 2011, the director issued a request for evidence. The director acknowledged that the petitioner's witness letters "state[d] that the petitioner has distinguished herself," but "there was not detailed information provided to establish those claims." The director also stated that the petitioner's claims lacked sufficient corroborating evidence.

In response, counsel asserted:

> The materials originally submitted and additional materials attached in the following pages provide clear evidence that [the petitioner's] knowledge and skills are unique. Testimonials from renowned experts, who are considered the foremost leaders in their fields, agree that her expertise, research advancements and leadership in the field of Dentistry have set her apart from others and have already had a national influence.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel's vague claims about previous vague claims add nothing of weight to the record.

In another example out of numerous unsupported claims, counsel stated that the petitioner's "further research is highly likely to help numerous patients worldwide, based on her demonstrated record of past successes." Counsel did not elaborate on the petitioner's "past successes" in "research."

The petitioner signed a statement indicating that she provided "free dental services in to the uninsured and underinsured population." The benefit arising from clinical patient care is largely restricted to the individual patients; it does not result in wider impact or influence. It does not appear that the petitioner herself actually wrote this statement, because another passage reads: "As an Assistant Professor in the Department of ..... I both reduce the shortage of dental faculty . . . and prepare the next generation of oral health professionals." This use of a blank space, apparently to be filled in later, indicates that whoever wrote the statement did not know which department employed the petitioner.

The statement indicated that is . . . considered as [a] Federal Dental Health Professional Shortage Area." A local worker shortage does not justify a waiver of the labor certification process, because that process is itself designed to address such shortages. Congress created a special statutory provision for certain physicians in shortage areas, but those physicians do not qualify for the waiver simply by declaring their intention to work in shortage areas. Rather, they must meet specific requirements set forth in section 203(b)(2)(B)(ii) of the Act, and the regulations at 8 C.F.R. § 204.12. Congress created no parallel program for dentists, and there is no reason to conclude that dentists, unlike physicians, can simply declare an intention to work in a shortage area rather than prove (through the labor certification process) an actual unfilled demand for their services.

Professor senior associate dean of Student and Alumni Affairs at stated that the petitioner has taught students who went on to "work in over 40 states," thereby giving her work national scope. The petitioner can only teach a finite number of students; their subsequent dispersal across the United States dilutes rather than expands the petitioner's impact as an educator.

A section of the response, labeled "Membership in Prestigious Societies," concerns two such memberships. The submitted evidence does not mention the American Dental Association, previously held forth as the sole example of an organization that "requires extraordinary credentials in the dental field." A letter dated February 10, 2011 stated that the petitioner "has been selected for inclusion in America's Registry of Outstanding Professionals. . . . [S]he met the criteria for membership by being in the top 10% of all applications in the field of dentistry." The record contains no other information or evidence regarding the Registry.

The other documented membership is in the The letter from that organization shows that the petitioner was admitted on January 24, 2012, more than seven months after she filed the petition. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Even then, the record says nothing about the Academy's membership requirements. Without such information, the documentation of the petitioner's membership is of little consequence.

The petitioner has labeled another section of the record "International Acclaim." The materials in this section consist of an opinion piece that the petitioner wrote in the February 7, 2012 issue of a printout of a January 2012 electronic mail conversation between the petitioner and regarding the petitioner's "recommendations to increase access to care in the remote areas of Punjab"; and a printout of another January 2012 electronic mail conversation between the petitioner and a faculty member regarding "the possibility of an epidemiologic study of dental caries." All of this evidence originated after the petition's filing date (and after the November 2011 issuance of the request for evidence), and none of it has any apparent relation to "international acclaim" of the petitioner.

The director denied the petition on October 19, 2012, stating that the petitioner had not distinguished herself from others in her field to an extent that would warrant the special benefit of the national interest waiver. The director discussed the petitioner's membership information from the two aforementioned organizations and information about her past work history, and found the petitioner's evidence to be insufficient to justify approval of the petition.

On appeal, counsel states:

> It is precisely because of [the petitioner's] national influence she has demonstrated achievement to a greater extent than U.S. workers having the same qualifications practicing in Dentistry. . . . [The petitioner] is in fact reaching countless communities and specialists in the field throughout the country. She is therefore having a profound and direct impact in her field above her peers in Dentistry.

The above quotation continues a pattern throughout the record, in which counsel and various witnesses repeatedly emphasize the petitioner's impact on her field without ever explaining what that impact is, or producing any meaningful evidence of that impact. Repetition is no substitute for corroboration. It is true that some of "the support letters . . . show that [the petitioner] has developed a national reputation as such a talented dentist," but it does not follow that those letters are well-documented or credible. One of those letters also indicated that "[m]embership in [the American Dental Association] requires extraordinary credentials." If that claim is true, then evidence to that effect should be readily available. If it is not true, then the witness letter contains false information and therefore is not credible. The petitioner has submitted no evidence to show that this claim is, in fact, true, and there is no reason to conclude that any other witness's claim is more credible than that particular claim. As noted previously, most of the witnesses' claims are very general and vague.

Counsel contends that the labor certification process "is not able to take into consideration the unique skills that [the petitioner] has developed as a dentist, the tremendous national impact of the work that she has performed, and the reputation that she has sustained amongst her peers nationally." This statement assumes key claims that the petitioner has yet to substantiate. Rather than provide any supporting evidence on appeal, counsel claims that such evidence "was [already] submitted." The record does contain a sizeable quantity of evidence, but that evidence establishes little more than

the petitioner's basic credentials as a dentist. The assertion that the petitioner is a nationally recognized figure in her field remains uncorroborated and therefore lacking in credibility.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.